refusal to vacate the judgment in the instant case seems clearly sound, for, even in the few states where judgments are set aside for mistakes of law, such relief would not be granted to a party who petitioned for the very decree entered. See *Douglass v. Todd* (1892) 96 Calif. 655, 659, 31 Pac. 623, 624.

WILLS—GIFTS CAUSA MORTIS—TO BE VALID AS DEED MUST PASS PRESENT INTEREST.—A quitclaim deed from a wife to her husband for a nominal consideration, made in anticipation of possible death from an operation, provided that it was to be effective only if the grantee survived her, that it was "to vest and take effect" on her decease and until that time was to be subject to revocation on her part. *Held*, that it was a testamentary document and invalid under the Statute of Wills. *Butler v. Sherwood* (1921) 196 App. Div. 603, 188 N. Y. Supp. 242.

The border line between a will and a deed not to be fully operative until the death of the grantor, is elusive. Ballantine, *When are Deeds Testamentary* (1920) 18 MICH. L. REV. 470. A will passes no present interest and is subject to recall at any time. *Nichols v. Emery* (1895) 109 Calif. 323, 41 Pac. 1089. But a deed, operative at the death of the grantor, to be valid, must be delivered by the grantor with an intent to transfer some *present* interest to the grantee. *Turner v. Scott* (1866) 51 Pa. 126; *Shaull v. Shaull* (1918) 182 Iowa, 770, 166 N. W. 301; Underhill, *Wills* (1900) sec. 37. The grantor may convey a fee simple estate expressly reserving to himself a life estate. *Tennant v. John Tennant Memorial Home* (1914) 167 Calif. 570, 140 Pac. 242; *Hudspeth v. Grumke* (1919, Mo.) 214 S. W. 865. Or the grantor may have clearly negatived any intent to pass a present interest. *Leaver v. Gauss* (1883) 62 Iowa, 314, 17 N. W. 522. It is in the absence of such express conditions that the courts have difficulty in determining whether a present interest has passed. This is dependent upon the intention of the parties to be ascertained by a close analysis of the language used or by the surrounding circumstances. *Hohenstreet v. Segelhorst* (1920, Mo.) 227 S. W. 80; *Seay v. Huggins* (1915) 194 Ala. 496, 70 So. 113; *Sprunger v. Ensley* (1920) 211 Mich. 102, 178 N. W. 714. The majority of courts attempt to construe the language as implying a life estate reserved to the grantor with the grantee's fee arising by way of remainder, i.e. title vests *in praesenti*, though the enjoyment is *in futuro*. *Bullard v. Suedmeier* (1920) 291 Ill. 400, 126 N. E. 117; *Green v. Skinner* (1921, Calif.) 197 Pac. 60; see *Abbott v. Holway* (1881) 72 Me. 298. The delivery must in every case be unequivocal. Where the deed is to be operative on the happening of an uncertain contingency other than the death of the grantor, the delivery is usually held ineffective even though the contingency occur. *Stone v. Daily* (1919) 181 Calif. 571, 185 Pac. 664; *Weber v. Brak* (1919) 289 Ill. 564, 124 N. E. 654; see also *Seeley v. Curts* (1913) 180 Ala. 445, 61 So. 807. The retaining of the power to control or recall the deed during the grantor's lifetime renders delivery conditional and hence ineffective. *Wortz v. Wortz* (1915) 128 Minn. 251, 150 N. W. 809; *Eckert v. Stewart* (1918, Tex. Civ. App.) 207 S. W. 317; *contra, Lippold v. Lippold* (1900) 112 Iowa, 134. 83 N. W. 809. But every effort is made to validate the manifest intent of the parties. *Jones v. Caird* (1913) 153 Wis. 384, 141 N. W. 228; *Price v. Cross* (1918) 148 Ga. 137, 96 S. E. 4. However, the combination of conditions of testamentary aspect such as appears in the instant case, coupled with the power to recall the deed, clearly renders the instrument void as an attempted will.